In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 209

EARL J. LOMBARD and GUARDIAN INVESTMENT CORPORATION, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The *per curiam* affirmance of the court of appeals is not reported.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 1965 (R. 51). A petition for rehearing *en banc* was denied on May 5, 1965 (R. 52). The petition for a writ of certiorari was filed on June 3, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court properly instructed the jury on criminal intent.

STATEMENT

Petitioners were convicted by a jury in the United States District Court for the District of Columbia on numerous counts charging securities frauds and the related local crime of embezzlement (R. 2-32, 42). Petitioner Earl J. Lombard was sentenced to concurrent terms of imprisonment—twenty months to five years—on each count (R. 49). Petitioner Guardian Investment Corporation was fined $500 on each embezzlement count and $1,000 on each Securities Act count (R. 50). The court of appeals affirmed.

The evidence showed a repeated pattern of purported sales of securities and failure to consummate the transactions after obtaining the victims' money. Petitioner Lombard, an attorney, controlled petitioner Guardian's operations and was personally aware of the fraudulent transactions. He was paid substantial sums by Guardian in the form of expenses of his office and legal fees.

ARGUMENT

Although petitioners seek to raise an issue as to the instruction on criminal intent, the charge to the jury is not included in the record certified to this Court. The full charge shows that the trial judge properly instructed the jury. He said in part:

> You are instructed with respect to each of the offenses charged in this indictment, the intent to defraud is an essential element of the crimes charged and proof of this intent, beyond a reasonable doubt, with respect to the defendants, or either of them, is ultimately a question of fact for the jury. You are instructed that fraudulent intent, as a mental element of crime, is often difficult to prove by direct and convincing evidence. In many cases it must be inferred from a series of seemingly isolated acts and instances. When these are sufficiently numerous they may in their totality properly justify an inference of a fraudulent intent; and this is true even though each act or instance, standing by itself, may seem rather unimportant.
>
> Stated otherwise, to act with "intent to defraud" means that a person acts knowingly with specific intent to deceive or cheat, for the purpose of causing some financial loss to another and bringing about some financial gain to himself.

In the light of this specific instruction on fraudulent intent, the instruction that a person is presumed to intend the natural and probable consequences of his act was proper. See *Estes* v. *United States*, 335 F. 2d 609, 615-617 (C.A. 5), certiorari denied, 379 U.S. 964, and cases there cited. When, at the request of the jurors, the court submitted excerpts from the applicable statutes (R. 40-41), there was no reason to repeat other instructions not requested by the jurors. *Orton* v. *United States*, 221 F. 2d 632, 636 (C.A. 4), certiorari denied, 350 U.S. 821.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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